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**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

**LARRY C. FLYNT,
 LFP VIDEO GROUP, LLC,
 and LFP IP, LLC,**

Plaintiffs,

vs.

**FLYNT MEDIA CORPORATION,
 a Delaware Corporation; JIMMY
 FLYNT, II; DUSTIN FLYNT; and
 DOES 1 through 10 inclusive,**

Defendants.

Case No.: 2:09-cv-00048-AHM-
 RZx

**STIPULATION RE THE
 CONTINUED DEPOSITION OF
 JIMMY FLYNT, SR.**

1 Plaintiffs Larry C. Flynt, LFP Video Group, LLC, and LFP IP, LLC
2 ("Plaintiffs") and Defendants Flynt Media Corporation, Jimmy Flynt, II and Dustin
3 Flynt ("Defendants") hereby submit their joint Stipulation Re the Continued
4 Deposition of Jimmy Flynt, Sr.:
5

6
7 1. Jimmy Flynt, Sr. is the brother of Plaintiff Larry Flynt and the father
8 of Defendants Dustin and Jimmy Flynt, II.
9

10 2. On or about April 13, 2009, pursuant to a subpoena issued in the
11 Southern District of Ohio by counsel for the Plaintiffs, Jimmy Flynt, Sr. appeared
12 for deposition in Cincinnati, Ohio. During the deposition, Jimmy Flynt, Sr. refused
13 to answer any substantive questions and asserted the Fifth Amendment privilege.
14 A true and correct copy of the deposition transcript is attached hereto as **Exhibit A.**
15

16
17 3. On or about June 3, 2009, Plaintiffs filed and pursued a motion in
18 the Southern District of Ohio in hopes of compelling Jimmy Flynt, Sr.'s testimony.
19 On or about July 21, 2009, Magistrate Judge Timothy S. Hogan held a conference
20 and instructed counsel for Jimmy Flynt, Sr. and Plaintiffs' counsel to reach an
21 agreement on the continued deposition of Jimmy Flynt, Sr. An agreement could
22 not be reached and a hearing on Plaintiffs' motions was eventually
23 set on September 30, 2009. A decision from Magistrate Judge Hogan was issued
24 on October 1, 2009. A true and correct copy of the decision is attached hereto as
25 **Exhibit B.**
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28

1 4. In conformance with the Southern District of Ohio's decision in this
2 matter, Plaintiffs' counsel issued a Notice of Continued Deposition of Jimmy Flynt,
3 Sr., setting the continued deposition for October 21, 2009.

4
5 5. The scheduled close of non-expert discovery in this matter was May
6 22, 2009. The parties therefore agree and stipulate that the deposition of Jimmy
7 Flynt Sr. may take place after May 22, 2009, and request, to the extent necessary,
8 that the Court extend the deadline for non-expert discovery to allow for the
9 completion of Jimmy Flynt Sr.'s deposition.
10

11
12 6. By entering into this stipulation, Defendants reserve their right to seek
13 permission to amend their trial witness list to include Jimmy Flynt, Sr., and
14 Plaintiffs reserve the right to object to same.
15

16
17 THEREFORE, the parties, through their respective counsel, stipulate and
18 request that to the extent required, that this Court issue an Order approving the
19 Continued Deposition of Jimmy Flynt Sr. in accordance with the Federal Rules of
20 Civil Procedure, and in conformance with the Order of Magistrate Timothy S.
21 Hogan dated October 1, 2009.
22

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24 ///

25
26 ///

1 DATED: October 19, 2009

LEWIS BRISBOIS BISGAARD & SMITH LLP

2
3 By: /s/ Daniel C. DeCarlo
4 Daniel C. DeCarlo
5 Mina I. Hamilton
6 Daniel R. Lewis
7 Attorneys for Defendants

8 DATED: October 19, 2009

LIPSITZ GREEN SCIME CAMBRIA LLP

9 By: /s/ Jonathan W. Brown
10 Paul J. Cambria Jr.
11 Jonathan W. Brown
12 Attorneys for Plaintiffs
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EXHIBIT A

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA

3 * * *

4 LARRY C. FLYNT, LFP VIDEO

5 GROUP, LLC, and LFP IP, LLC,

6 Plaintiffs,

CASE NO.:

7 vs.

2:09-CV-00048-AHM-RZx

8 FLYNT MEDIA CORPORATION, a

9 Delaware corporation; JIMMY

10 FLYNT, II; DUSTIN FLYNT; and

11 DOES 1 through 10, inclusive,

12 Defendants.

13 * * *

14 Deposition of JIMMY FLYNT, SR., Witness
15 herein, called by the Plaintiffs for direct
16 examination pursuant to the Rules of Civil
17 Procedure, taken before me, Karen M. Rudd, a
18 Notary Public in and for the State of Ohio, at the
19 offices of Sirkin, Pinales & Schwartz, 105 West
20 Fourth Street, Suite 920, Cincinnati, Ohio, on
21 Monday, April 27, 2009, at 8:46 a.m.

22 * * *

1 APPEARANCES:

2 On behalf of the Plaintiffs:

3 Lipsitz, Green, Scime, Cambria

4 By: Jonathan W. Brown
5 Attorney at Law
6 42 Delaware Avenue
Suite 120
Buffalo, New York 14202

7 and

8 Labowe, Labowe & Hoffman

9 By: Mark S. Hoffman
10 Attorney at Law
11 1631 W. Beverly Boulevard
Second Floor
Los Angeles, California 90026

12 On behalf of the Defendants:

13 Lewis, Brisbois, Bisgaard & Smith

14 By: Daniel C. DeCarlo
15 Attorney at Law
221 N. Figueroa Street
Suite 1200
16 Los Angeles, California 90012

17 On behalf of the Witness:

18 Sirkin, Pinales & Schwartz

19 By: H. Louis Sirkin
20 Attorney at Law
920 Fourth & Race Tower
105 West Fourth Street
21 Cincinnati, Ohio 45202

22 ALSO PRESENT:

23 Theresa Flynt

24 * * *

25

08:46:16 1 MR. SIRKIN: Mr. Flynt has been
08:46:19 2 advised to exercise his rights under the Fifth
08:46:22 3 Amendment where appropriate. I will indicate
08:46:25 4 that it is my belief that there are currently,
08:46:28 5 and I don't believe that there's any -- I don't
08:46:31 6 know of any investigation that's going on
08:46:33 7 against Hustler or anything with that, but
08:46:36 8 there have been some federal indictments, and
08:46:39 9 I'm aware of a couple that I cannot disclose,
08:46:42 10 because we may be involved in them.

08:46:46 11 But I can tell you there's one
08:46:47 12 case that is currently pending in the District
08:46:53 13 of Columbia, it's against Evil Angel and John
08:46:57 14 Stagliano, and we believe that a lot of
08:47:00 15 information that the government has in that
08:47:03 16 case, because we have been supplied copies of
08:47:05 17 depositions, that Mr. Stagliano had given and
08:47:10 18 responded to in his piracy case out in
08:47:14 19 California.

08:47:14 20 So based upon our concern,
08:47:18 21 Mr. Flynt will be asserting his rights. And I
08:47:21 22 will refer you to Rogers versus the United
08:47:25 23 States, which is 71 S. Ct. 438, that the
08:47:31 24 propriety of exercising ones right to the Fifth
08:47:33 25 Amendment in civil proceedings where

08:47:35 1 appropriate where an answer my tend to
08:47:37 2 incriminate. You are free to go forward.

08:47:42 3 MR. HOFFMAN: Let's swear him in.

08:47:42 4 JIMMY FLYNT, SR.

08:47:42 5 of lawful age, Witness herein, having been first
6 duly cautioned and sworn, as hereinafter
7 certified, was examined and said as follows:

8 DIRECT EXAMINATION

08:47:56 9 BY MR. BROWN:

08:47:56 10 Q. Good morning, Mr. Flynt.

08:47:57 11 A. Good morning.

08:47:57 12 Q. My name is Jonathan Brown. I'm
08:47:59 13 one of the attorneys for the plaintiffs in this
08:48:01 14 case. Can you please spell your full name for
08:48:07 15 the record?

08:48:07 16 A. Jimmy, J I M M Y, Flynt, F L Y N T.

08:48:13 17 Q. And have you been known by any
08:48:18 18 other names, sir?

08:48:19 19 A. No.

08:48:20 20 Q. And have you ever had your
08:48:22 21 deposition taken before?

08:48:23 22 A. On a divorce proceeding many, many
08:48:28 23 years ago.

08:48:28 24 Q. Anything else?

08:48:29 25 A. I don't know. No.

08:48:33 1 Q. Okay. I assume that your lawyer
08:48:35 2 has already explained to you a little bit about
08:48:37 3 the deposition process, but I want to go over a
08:48:39 4 few ground rules before we get into the facts
08:48:42 5 of the case.

08:48:44 6 Unless your attorney instructs you
08:48:46 7 otherwise, you must give me a verbal answer to
08:48:48 8 my questions. Do you understand that?

08:48:49 9 A. Yes.

08:48:49 10 Q. In other words, the court reporter
08:48:52 11 can't record a head nod and has difficulty
08:48:55 12 transcribing words like uh-huh and uh-uh and
08:48:59 13 na. So I would like to ask you to try to
08:49:01 14 verbalize your response the best as possible
08:49:03 15 using yes, no, or other words to that effect.
08:49:07 16 Is that fair?

08:49:07 17 A. I understand.

08:49:08 18 Q. And when we are talking today,
08:49:13 19 your attorney may assert objections for the
08:49:19 20 record, et cetera. We need to be careful and
08:49:20 21 try not to talk over one another. You need to
08:49:22 22 try to let me finish my question before you
08:49:24 23 answer. Is that fair?

08:49:25 24 A. Yes.

08:49:25 25 Q. And when I ask you a question, I'm

08:49:29 1 going to assume that you understand it. So if
08:49:32 2 you don't understand it, please let me know,
08:49:34 3 and I will try to rephrase it.

08:49:36 4 A. Yes.

08:49:36 5 Q. And we are going to take a break
08:49:40 6 or two, I'm sure, during the deposition, and if
08:49:42 7 you need to take a break at any point in time,
08:49:44 8 please let me know that.

08:49:46 9 A. Yes.

08:49:47 10 Q. As you probably know already, the
08:49:52 11 court reporter sitting to your left will be
08:49:56 12 preparing a transcript or a record of our
08:50:00 13 deposition here, and you are going to be given
08:50:03 14 that transcript for review. Do you understand
08:50:06 15 that?

08:50:06 16 A. Yes.

08:50:06 17 Q. And you will have an opportunity
08:50:08 18 to make any corrections or clarifications that
08:50:13 19 you would like to the deposition transcript.
08:50:16 20 Do you understand that?

08:50:17 21 A. Yes.

08:50:17 22 Q. Do you also understand that if you
08:50:21 23 do make any changes to the transcript today,
08:50:25 24 that we will be able to use those changes to
08:50:29 25 question your veracity? Do you understand

08:50:32 1 that?

08:50:33 2 A. Yes.

08:50:33 3 Q. And have you taken any medications
08:50:39 4 within the past 24 hours that might impair your
08:50:41 5 ability to give us your best testimony today?

08:50:45 6 A. No.

08:50:45 7 Q. Have you taken any alcohol in the
08:50:49 8 past 24 hours?

08:50:50 9 A. No.

08:50:52 10 Q. And is there any reason that you
08:50:55 11 cannot give your best testimony today?

08:50:57 12 A. No.

08:50:57 13 Q. I'd like to know everything you
08:51:05 14 did prior to coming to your deposition today.

08:51:08 15 Did you review any documents?

08:51:12 16 A. My Fifth Amendment rights.

08:51:17 17 Q. Anything else?

08:51:18 18 A. Nope

08:51:21 19 Q. When is the last time you spoke
08:51:23 20 with your son -- let me back up. You have how
08:51:30 21 many sons, sir?

08:51:31 22 A. Two.

08:51:32 23 Q. And what are their names?

08:51:34 24 A. Jimmy and Dustin.

08:51:36 25 Q. And Jimmy R. Flynt, II, is a

08:51:40 1 defendant in this action. Do you understand
08:51:42 2 that?

08:51:42 3 A. That's what I understand.

08:51:43 4 Q. Okay. And you also understand
08:51:45 5 that Dustin Flynt, your other son, is also a
08:51:47 6 defendant in this action?

08:51:48 7 A. That's what I hear.

08:51:49 8 Q. Okay. And your brother is Larry
08:51:53 9 C. Flynt; is that correct?

08:51:54 10 A. That's correct.

08:51:55 11 Q. Is he your older brother or
08:51:57 12 younger brother?

08:51:58 13 A. Older.

08:51:59 14 Q. Okay. Getting back to my other
08:52:07 15 question. Did you review any documents before
08:52:10 16 you came here today related to this lawsuit?

08:52:14 17 A. I answered -- the Fifth Amendment,
08:52:17 18 I mean, my rights under the -- granted to me
08:52:20 19 under the Fifth Amendment to the Constitution.
08:52:22 20 That's what I have reviewed.

08:52:23 21 Q. Okay. And did you speak with your
08:52:26 22 son Jimmy, II?

08:52:28 23 A. No.

08:52:29 24 Q. Did you speak with Dustin?

08:52:30 25 A. Very seldom.

08:52:32 1 Q. And did you speak with anyone
08:52:35 2 other than your attorney about your deposition
08:52:37 3 here?

08:52:37 4 A. No.

08:52:39 5 Q. What does LFP stand for?

08:52:51 6 A. Larry Flynt Publications.

08:52:54 7 Q. And how long have you been
08:52:58 8 involved with Larry Flynt publications?

08:53:02 9 MR. DeCARLO: Objection, vague.

08:53:05 10 THE WITNESS: Since the -- oh,
08:53:09 11 okay. I'm going to take the Fifth Amendment.
08:53:14 12 It grants me the rights under the Fifth
08:53:16 13 Amendment of the Constitution that whatever I
08:53:18 14 testify to may tend to incriminate me.

08:53:22 15 Q. Have you ever been employed by --
08:53:25 16 well, let me back up. You understand your
08:53:28 17 brother Larry Flynt owns many, many different
08:53:31 18 companies. Do you understand that?

08:53:33 19 A. I respectfully decline to answer
08:53:35 20 this question that it might incriminate me and
08:53:39 21 violates my Fifth Amendment rights.

08:53:41 22 Q. Have you ever been employed by an
08:53:42 23 LFP company?

08:53:44 24 A. I respectfully decline to answer
08:53:48 25 that question on the grounds that it may

08:53:49 1 incriminate me by the rights granted to me by
08:53:54 2 the Fifth Amendment.

08:53:55 3 Q. What is Flynt Media Corporation?

08:53:58 4 A. I respectfully decline to answer
08:54:00 5 that question on the grounds that it might
08:54:02 6 incriminate me by the rights granted to me in
08:54:05 7 the Fifth Amendment.

08:54:06 8 Q. Do you have any ownership interest
08:54:08 9 in Flynt Media Corporation?

08:54:09 10 A. I respectfully decline to answer
08:54:12 11 that question, it may tend to incriminate me,
08:54:16 12 by the rights granted to me by the Fifth
08:54:16 13 Amendment.

08:54:19 14 MR. DeCARLO: Can we go off the
08:54:20 15 record a second?

08:54:21 16 MR. BROWN: Sure.

08:54:21 17 (Thereupon, an off-the-record
09:02:13 18 discussion was held.)

09:02:13 19 MR. BROWN: Counsel for the
09:02:16 20 parties have conferred off the record
09:02:19 21 concerning Jimmy R. Flynt, Sr.'s, assertion of
09:02:26 22 the Fifth Amendment privilege. It is our
09:02:28 23 understanding today that he will not answer any
09:02:31 24 questions related to his employment with any of
09:02:36 25 Larry Flynt's companies.

09:02:38 1 It is also my understanding he
09:02:40 2 will not answer any questions related to Flynt
09:02:44 3 Media Corporation, the formation of Flynt Media
09:02:47 4 Corporation, the Flynt DVD line released by
09:02:52 5 Flynt Media Corporation. I also understand he
09:02:55 6 will not -- he will continue to assert the
09:02:58 7 Fifth as to any conversations he may have had
09:03:01 8 with his sons concerning Flynt Media
09:03:04 9 Corporation.

09:03:05 10 I also understand that he is
09:03:07 11 asserting the Fifth as to any conversations he
09:03:09 12 may have had with his brother concerning Flynt
09:03:12 13 Media Corporation. Are there any other areas
09:03:16 14 I'm missing?

09:03:17 15 MR. DeCARLO: It's my
09:03:18 16 understanding that Mr. Flynt will not testify
09:03:21 17 to any -- to his current status vis-a-vis any
09:03:27 18 Larry Flynt company, as well as any of the
09:03:30 19 conversations he has had with Larry Flynt and
09:03:33 20 others about his current employment status.

09:03:39 21 MR. SIRKIN: That is correct.

09:03:50 22 Q. Mr. Flynt, did you originally
09:03:52 23 spell your name with an I, the last name,
09:03:55 24 F L I N T?

09:03:58 25 A. I'm going to not answer that

09:04:00 1 question by my rights granted by the Fifth
09:04:05 2 Amendment as it may incriminate me.

09:04:09 3 Q. Is your brother Larry C. Flynt
09:04:11 4 famous?

09:04:13 5 A. I think that's been stipulated to.

09:04:19 6 MR. BROWN: Is there anything else
09:04:20 7 we need to put on the record?

09:04:22 8 MR. DeCARLO: All my questions
09:04:23 9 will not be answered, so I do have questions,
09:04:25 10 but in light of the representation by
09:04:28 11 Mr. Sirkin, I don't feel it would be productive
09:04:30 12 to go any further.

09:04:31 13 MR. BROWN: And I also would like
09:04:32 14 to say that I have several hours' worth of
09:04:35 15 questions that we would like to ask the
09:04:37 16 deponent here today, but given the stance
09:04:41 17 regarding the Fifth Amendment privilege, we
09:04:44 18 obviously have a lot of area to cover and that
09:04:48 19 the deponent is refusing to answer.

09:04:52 20 MR. SIRKIN: He is not refusing;
09:04:53 21 he is asserting his rights under the Fifth
09:04:56 22 Amendment.

09:04:56 23 MR. BROWN: Well, he is refusing
09:04:57 24 to answer based upon his rights under the Fifth
09:05:00 25 Amendment.

09:05:02 1 MR. SIRKIN: I'm not going to play
09:05:04 2 semantics. He is asserting a right guaranteed
09:05:06 3 to him by the Fifth Amendment.

09:05:11 4 MR. HOFFMAN: We will just have to
09:05:12 5 have the judge in Los Angeles determine the
09:05:16 6 propriety or lack of propriety of the
09:05:17 7 assertions and the travel expenses and
09:05:20 8 out-of-pocket expenses incurred coming here to
09:05:22 9 take -- to attempt to --

09:05:25 10 MR. SIRKIN: Well --

09:05:25 11 MR. HOFFMAN: Let me finish -- to
09:05:27 12 attempt to take the deposition of Mr. Flynt.
09:05:28 13 I'm not the judge. I don't know what he is
09:05:30 14 going to do, and it's not my place to
09:05:32 15 speculate, but I told you off the record that
09:05:34 16 there have been expenses incurred.

09:05:36 17 MR. SIRKIN: I understand that.

09:05:37 18 MR. HOFFMAN: Two days of travel.

09:05:38 19 MR. SIRKIN: I will also indicate
09:05:39 20 to you that it is no surprise that he is
09:05:42 21 asserting the Fifth Amendment. I indicated
09:05:44 22 that as early as the beginning of March that he
09:05:46 23 would be asserting it where I believed it was
09:05:48 24 appropriate, and that's a determination based
09:05:52 25 upon my experience, my knowledge of what I

09:05:55 1 believe is going on in the United States today
09:05:57 2 and investigations and that he is asserting the
09:06:01 3 Fifth Amendment. If the judge compels, then we
09:06:03 4 will follow Court orders.

09:06:09 5 MR. HOFFMAN: Off the record,
09:06:12 6 ma'am.

09:06:12 7 (Thereupon, an off-the-record
09:07:24 8 discussion was held.)

09:07:24 9 MR. BROWN: Counsel have just
09:07:32 10 conferred off the record. The transcript for
09:07:35 11 today's deposition will be sent to Mr. Sirkin's
09:07:39 12 office and within one week of receipt
09:07:42 13 Mr. Sirkin will let the parties know whether
09:07:44 14 there have been any changes or corrections to
09:07:46 15 the transcript. So stipulated?

09:07:51 16 MR. DeCARLO: So stipulated.

09:07:52 17 MR. SIRKIN: So stipulated.

09:07:56 18 (Thereupon, the deposition was
09:07:58 19 concluded at 9:07 a.m.)

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1 STATE OF OHIO)

2 COUNTY OF MONTGOMERY) SS: CERTIFICATE

3 I, Karen M. Rudd, a Notary
4 Public within and for the State of Ohio, duly
5 commissioned and qualified,

6 DO HEREBY CERTIFY that the
7 above-named JIMMY FLYNT, SR., was by me first duly
8 sworn to testify the truth, the whole truth and
9 nothing but the truth.

10 Said testimony was reduced to
11 writing by me stenographically in the presence
12 of the witness and thereafter reduced to
13 typewriting.

14 I FURTHER CERTIFY that I am not a
15 relative or Attorney of either party, in any
16 manner interested in the event of this action,
17 nor am I, or the court reporting firm with which
18 I am affiliated, under a contract as defined in
19 Civil Rule 28(D).

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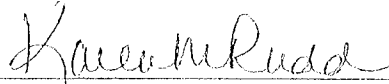
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1 IN WITNESS WHEREOF, I have hereunto set
2 my hand and seal of office at Dayton, Ohio, on
3 this 27th day of April, 2009.

4
5 

6 KAREN M. RUDD
7 NOTARY PUBLIC, STATE OF OHIO
8 My commission expires 5-21-2012
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Flynt, Larry C., et al. v. Flynt Media Corporation, etc., et al.

Jimmy Flynt, Sr.

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EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

IN RE:
JIMMY FLYNT, SR.

CASE NO. 1:09 -mc-00043
(HOGAN, M. J.)

ORDER

A case is pending in the United States District Court for the Central District of California, in which the Flynt Brothers, Larry and Jimmy, Sr., have an interest. In that case, Larry claims that Jimmy, Sr.'s two sons, Jimmy II and Dustin, and their corporation used the Flynt name and trademark without permission. A subpoena was issued from this District compelling Jimmy Flynt, Sr. to be deposed. Jimmy Flynt, Sr. appeared for his deposition, but invoked the protection of the Fifth Amendment to multiple questions. Jimmy, Sr.'s fear is that by testifying freely, he will provide information to prosecutors which will assist them in prosecuting him for violations of obscenity laws. This behavior set the stage for the filing of two Motions, the first is Larry's Motion to Disqualify H. Louis Sirkin, Esq. from representing Jimmy, Sr. at the deposition, and the second is Larry's Motion for Jimmy Sr. to show cause why he should not be held in contempt. We decline to order H. Louis Sirkin removed as counsel for the purpose for which he was retained and we decline to require Jimmy, Sr. to show cause, but we do order the rescheduling of Jimmy, Sr.'s deposition.

THE MOTION TO DISQUALIFY

Larry Flynt, a plaintiff in this case, has established, and it is common knowledge, that Mr. Sirkin has been his lawyer and the lawyer for his various companies, including "Hustler Hollywood" for years, and currently represents "Hustler Hollywood," a limited liability company in which Larry Flynt has an interest, in a case pending in a Kentucky Appeals Court. Plaintiffs assert that Mr. Sirkin cannot serve as Jimmy, Sr.'s counsel because Rule 1.7, Ohio Rules of Professional Conduct, precludes such service. Simply stated, Plaintiffs say that Mr. Sirkin cannot serve as counsel for Jimmy, Sr. because Jimmy, Sr.'s interest is adverse to that of Larry.

It is, perhaps, ironic that Mr. Sirkin was asked by counsel for Plaintiffs to accept service of the deposition subpoena on behalf of Jimmy, Sr. In any event, Mr. Sirkin has filed no formal response, but has orally informed this Court that he was called into service at the last minute, had little time to prepare for the deposition in question and that the scope of his representation was restricted to advising Jimmy, Sr. on his Fifth Amendment rights. In short, Mr. Sirkin's argument is that in so advising Jimmy, Sr., he took no stance adverse to Larry.

Subsequently, counsel for Plaintiffs has provided a list of topics upon which he wishes to question Jimmy, Sr. The Court has reviewed that document and observes that not all the questions call for privileged information. In addition, we believe that Mr. Sirkin has the skill and experience necessary to advise Jimmy, Sr. without compromising any interest of Larry's. If Mr. Sirkin does assert any position adverse to Larry during Jimmy, Sr.'s deposition, the Court will intervene if and when put on notice. The Motion to Disqualify H. Louis Sirkin Esq. is denied.

THE MOTION TO SHOW CAUSE

The deposition of Jimmy, Sr. was terminated, not by Jimmy, Sr. or his lawyer, but by Plaintiffs. While Jimmy, Sr. may have been ill advised to assert his Fifth Amendment Right as frequently as he did, he complied with the directive of the subpoena and did appear for his deposition. No Court Order was sought compelling Jimmy, Sr. to answer any question over his Fifth Amendment objection in compliance with Rule 37, Federal Rules of Civil Procedure. Under the circumstances, we do not believe that contempt is the proper remedy. On the other hand, Plaintiffs have been deprived of information which they are entitled to receive.

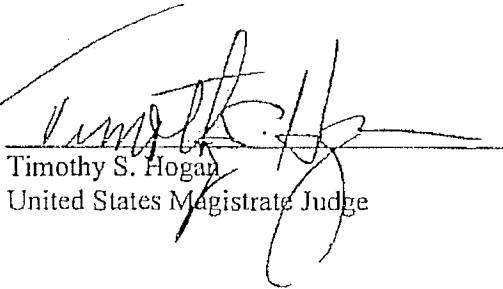
The correct procedure, it seems to us, is to reschedule the deposition of Jimmy, Sr., not by notice, but by agreement of counsel. Jimmy, Sr.'s counsel can assert his Fifth Amendment privilege where applicable and any disputes may be resolved by a telephonic conference with the supervising Magistrate Judge. Should the privilege be improperly asserted, the deponent will be ordered to answer, and likely found in contempt if he refuses. It would save time if counsel for Plaintiffs would provide a list of topics upon which he wishes to depose Jimmy, Sr., and counsel for Jimmy, Sr. would be prepared to make a specific argument why his client believes that prosecution has begun, is probable or possible. Counsel for Plaintiffs may want to consider how to avoid any Fifth Amendment issue by seeking other ways to obtain the same information.

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The Court also orders the parties to this dispute to disclose the date and time for Jimmy, Sr.'s rescheduled deposition so that time may be allocated to rule on the propriety of Jimmy, Sr.'s invocation of the Fifth Amendment privilege, if necessary.

IT IS SO ORDERED.

October 1, 2009



Timothy S. Hogan
United States Magistrate Judge